

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8330 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

CHAMPSI HIRJI KALIYA

Versus

SUB DIVISIONAL MAGISTRATE

Appearance:

MR JIVANLAL G SHAH for Petitioner
MR RC KODEKAR, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 03/03/2000

ORAL JUDGEMENT

Heard learned counsel Mr. Shah appearing for the petitioner and learned AGP Mr. Kodekar for the Respondents. I have gone through the averments made in the petition. It is positively averred by the petitioner that in reality, NA permission was granted for the land

and hotel was run by the petitioner thereon. It is also clear that the petitioner was issued Licence No. 470/85. In the month of December 1988, i.e. approximately after three years, the petitioner was served with notice to show cause by the Sub Divisional Magistrate as to why Entertainment Licence i.e. permission to run hotel, should not be revoked on the ground that same is erected on the land for which NA permission is not granted. The other ground for issuance of notice was the alleged construction made in violation of Ribbon Development Rules. When it is positively averred by the petitioner that NA permission was obtained, then the said averment ought to have been resisted and denied by the respondent State by filing counter affidavit. The matter is admitted by this Court in the month of December 1988 i.e. on 16.12.1988. I would like to quote the order passed by this Court (Coram : A.P.Ravani, J) on 16.12.1988 while admitting this petition :-

" Rule. By way of interim relief, further proceedings pursuant to show cause notice Annexure : "C" issued by respondent no.1 are stayed.

If respondents feel aggrieved by the aforesaid order of interim relief, the respondents may move this Court within ten days from the date of receipt of the order. Respondents are directed to file affidavit-in reply latest before February 28, 1989. Thereafter, it will be open to the respondents to request for fixed date of hearing.

Direct Service. "

Looking to the nature of the development in the area where hotel of the petitioner is situated, and the fact that the petition is not resisted by filing any counter affidavit as directed by the Court, notice to show cause issued by the Sub Divisional Magistrate, Anjar has no legs to stand and, therefore, same shall have to be quashed. I am told by learned counsel appearing for the petitioner that even till this date, hotel is running and licence granted to the petitioner has been renewed from time to time by the competent authority.

In the result, petition is allowed. Impugned show-cause notice dated 29.11.1988 issued by Sub Divisional Magistrate, Anjar (Annex.: "C") is hereby quashed and set aside. It is, however observed that it will be open to the respondent State or the Competent Authority to initiate any proceedings if the petitioner has violated any of the conditions of licence issued to him.

Rule is made absolute subject to the aforesaid

observations. No costs.

3.3.2000 [C.K. BUCH, J]

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